

TASK FORCE ON SELF-REPRESENTED LITIGANTS

REPORT

The Judicial Council's Task Force on Self-Represented Litigants was named by Chief Justice Ronald M. George in May 2001. In response to the growing number of self-represented litigants, the task force members were charged with the following mission:

1. To coordinate the statewide response to the needs of self-represented parties;
2. To finalize development of a statewide pro per action plan and to launch implementation of that action plan, where appropriate;
3. To develop resources for pro per services, particularly for those activities in the statewide pro per action plan that require significant funding; and
4. To make recommendations to the Judicial Council, the State Bar, and other appropriate institutions about additional measures that should be considered to improve the way in which the legal system functions for self-represented parties.

The task force is chaired by Associate Justice Kathleen E. O'Leary, Court of Appeal, 4th District. Its members are a diverse group of individuals from throughout the state representing the judiciary, the State Bar of California, trial court administration, court-based self-help center attorneys, county government, local bar members, legal services, law librarians, and the public. (See Appendix 1 for task force roster.)

In this report, the task force has attempted to present a comprehensive statewide plan that effectively addresses the way in which courts are handling self-represented litigants. In its assessment of the needs of self-represented litigants, the task force found that many of California's courts have already begun to implement strategies specifically designed to manage cases involving self-represented litigants more effectively. The task force commends them and finds that there is a compelling need throughout the state for courts to change the way they have been doing business. The growth in the numbers of pro per litigants has been documented in a myriad of reports and articles and particularly in the strategic plans submitted by local courts to the Judicial Council. In its analysis of these strategic plans, the Judicial Council identified both social and economic trends that are generating ever-increasing numbers of self-represented litigants in the courts. Court operational systems, in accord with traditional adversary jurisprudence, have been designed to manage a flow of cases in which the vast majority of litigants have had attorneys to represent them. Strategies for handling cases without attorneys have typically not been addressed as a core function of the courts. The same economic trends currently creating adverse fiscal conditions for courts are also working to increase the population of self-represented litigants. This is a reality that is unlikely to change any time soon.

The task force has found a unity of interest between the courts and the public with respect to assistance for self-represented litigants. Lack of legal assistance is a clearly definable access issue for the public. It also creates a structural gap for the courts. Many local strategic plans made the link between improved assistance to self-represented litigants and the improvement of the management and administration of the courts. Cost benefits to the courts produced by pro

per assistance programs have already been documented in terms of savings in courtroom time; reduction of inaccurate paperwork, inappropriate filings, unproductive court appearances, and resulting continuances; and increases in expeditious case management and settlement services. The success of these programs provides direction to courts as they attempt to deal with current budget conditions. It is imperative to the efficient operation of today's courts that well-designed strategies to serve self-represented litigants are incorporated throughout the full scope of court operations. The task force believes that unless the impact on self-represented litigants is a critical consideration in planning, any redesign of court operations will not be successful in producing positive net savings.

With its family law facilitator program, family law information centers, self-help Web site, self-help pilot projects, equal access partnership grants, and numerous innovative programs created by local courts in collaboration with bar associations and legal services, California has led the nation in beginning to address the reality of litigation involving self-represented litigants. The task force believes that California is in the best position to continue this leadership role. (A comprehensive description of California's self-help programs and projects is attached as Appendix 2.)

Background Information

In November 1999, the American Judicature Society held a National Conference on Self-Represented Litigants Appearing in Court, sponsored by the State Justice Institute. The Chief Justice appointed a team to attend the conference. The team developed a draft action plan that resulted in four regional conferences in California designed to encourage trial courts to develop their own action plans for serving self-represented litigants. To date 52 of California's 58 county courts have participated in this planning process, and 45 have completed their plans. The task force has reviewed all 45 action plans. (A summary of these plans is attached as Appendix 3.)

Through this planning process, local trial courts reported growing numbers of self-represented litigants in all areas of civil litigation. Action plans reported up to 95 percent pro per rates in unlawful detainer, 55 percent in probate, 50 percent in general civil, 40 percent in juvenile dependency, and 95 percent in family law. Available data from the Judicial Branch Statistical Information System (JBSIS) shows that at the time of disposition, petitioners in dissolution cases were pro per 80 percent of the time and in paternity cases 96 percent. In one 12-month period, California's family law facilitator program served over 450,000 self-represented litigants, the family law information centers served over 45,000 such individuals, and over 1 million people used the California Courts Online Self-Help Center. Over 4.3 million of California's court users are self-represented. The number of Californians whose income is not sufficient to afford private legal representation, yet is above the limits of entitlement to free service from legal aid assistance programs or the public defender, continues to grow and results in larger numbers of self-represented litigants within even the juvenile and criminal law departments.

Recommendations

In crafting its recommendations, the task force has, to the greatest extent possible, attempted to include replication of existing best practices, collaborative efforts, development of standardized criteria for self-help centers, and other cost-effective methods or procedures. Mindful of the

need to ensure the wisest utilization of scarce public resources, the task force has attempted to design processes and tools to measure outcomes. Additionally, an effort has been made to identify both existing and potential funding sources.

The task force has analyzed the self-represented litigants action plans submitted by the local trial courts, consulted with Judicial Council advisory committees on subject matter concerns, and met with experts on serving self-represented litigants. These recommendations are designed to assist California's courts to continue their leadership role in creating operational systems that work well for the management of cases involving self-represented litigants and in improving access to justice for the public.

RECOMMENDATION I: SELF-HELP CENTERS

IN ORDER TO EXPEDITE THE PROCESSING OF CASES INVOLVING SELF-REPRESENTED LITIGANTS, AND INCREASE ACCESS TO JUSTICE FOR THE PUBLIC, COURT-BASED SELF-HELP CENTERS SHOULD BE DEVELOPED THROUGHOUT THE STATE.

THE TASK FORCE RECOMMENDS THAT:

A. The Judicial Council include self-help services as a core court function in the trial court budget process.

Assistance for self-represented litigants, and the efficient processing of cases involving self-represented litigants, should be identified as core operational processes of the court that directly affect its ability to achieve its mission, and appropriate funding provided. Budget request forms developed by the Judicial Council should reflect that these services are integral to the function of the court.

B. Courts utilize court-based, attorney-supervised, staffed self-help centers as the optimum way to facilitate the efficient processing of cases involving self-represented litigants and to increase access to justice for the public.

A court-based, attorney-supervised, staffed self-help center is the optimum approach for both litigants and the court. Self-help center staff should be supported by written instructional materials, resource guides, computer programs and Web sites, videos, and other materials. Without available staff assistance, these resources alone should not be considered a self-help center. Sufficient support staff should also be provided to self-help center attorneys through training, additional staffing, and potential redeployment of existing staff.

Surveys of self-represented litigants demonstrate that most litigants find personal contact with staff essential. Personal assistance by self-help center staff has been successfully provided through individual face-to-face assistance, workshops, teleconferencing, or telephone "help lines". Services may be provided at the courthouse, at court outpost locations, in mobile vans, libraries, jails, or other community locations. Some litigants are comfortable securing information exclusively through written materials or via the Internet. These services are helpful

for those who find it difficult to take time from work or other responsibilities or who face geographic or physical challenges getting to a self-help center. It appears that the most desirable format for legal assistance varies based on the sophistication of the person seeking assistance, the type of proceeding, the complexity of the issues, the availability of staffing resources, and the volume of demand for services, along with a number of other factors.

C. Self-help centers conduct initial assessment of a litigant's needs (triage) to save valuable court time and allow for the most prudent allocation of resources.

It is clear that there are individuals who truly would be denied access to justice without full or partial representation by counsel. One of the services that is the most valuable to the self-represented litigant is help with recognizing the need for legal counsel and referrals to appropriate legal resources in the community. This can create savings in court time otherwise spent repeatedly processing inaccurate or incomplete paperwork, calendaring unnecessary hearings, and dealing with repeated requests for legal advice made to judicial officers and other court staff. It also helps to discourage people from initiating complex lawsuits without legal representation in subject matter areas that require costly expert witnesses, difficult evidentiary proof, and other challenges impossible for a self-represented litigant to overcome. The self-help centers should be encouraged to work with legal aid organizations and pro bono programs that can provide full representation, as well as certified lawyer referral and information services. Courts should also support local bars and lawyer referral services programs to develop a panel of attorneys who provide unbundled legal services. It should be a goal of a self-help center to work with local bar associations and legal services organizations to develop a seamless system of referrals so that the public can access the appropriate level of service as easily as possible. (Please refer to the diagram in Appendix 4.)

Identifying a litigant's issues and determining the adequate degree of necessary support early in the process also increases court efficiency and allows for the most prudent allocation of resources. This assessment (triage) should occur when an individual first arrives at the self-help center seeking help. A qualified member of the court staff should conduct a brief needs assessment and direct the person appropriately. Staff needs to know how to ask detailed direct questions to immediately identify the needs of the self-represented litigant and potential barriers such as language issues. Early intervention to assist with the correct completion of paperwork, explain procedural requirements including filing fees and costs and provide basic information about court processes can save time for the court clerks, as well as the courtroom staff, and can avoid unnecessary continuances, and enhance public trust and confidence in the court.

D. Court-based self-help centers serve as focal points for countywide or regional programs, in collaboration with legal services, local bar associations, and other community stakeholders, for assisting self-represented litigants.

Valuable support for those seeking assistance can be provided outside the court structure. It is strongly recommended that other existing and effective efforts to support self-represented

litigants be continued and encouraged. Through partnership agreements and other collaborative efforts, private nonprofit legal programs; local bar associations; law libraries; public libraries; law schools and colleges; professional associations for psychologists, accountants, and process servers; and other appropriate community groups and organizations can offer staffing support, make facilities available for workshops, or contribute in other ways.

Through aggressive networking and collective effort, a greater amount of services can be provided and a larger number of self-represented litigants can be assisted. One court cited its positive experiences with a mediation program for landlord-tenant disputes sponsored by the local Board of Realtors. County law libraries have been a reliable and traditional source of support for self-represented litigants. Non-profit legal services organizations are currently providing help in a number of counties through both direct services and pro bono attorneys. Many rural courts have developed successful models of sharing facilitator and self-help attorney services between counties.

Successful use of volunteers has been achieved throughout the state. The task force has identified many sources of a large number of potential volunteers to assist in these programs, including members of local bar associations; law students; attorneys emeritus; high school, college, and graduate students; retired persons; paralegal students; and retired judicial officers.

The community-focused planning process by the local courts has been successful in involving representatives of these many different service providers in collaborative efforts with the courts to develop and implement enhanced services including assistance for self-represented litigants. The Judicial Council should continue to support ongoing strategic planning.

E. Self-help centers provide ongoing assistance throughout the entire court process, including collection and enforcement of judgments and orders.

The task force recognizes that the need for bilingual staff and legal information and education for self-represented litigants is not limited to the preparation of forms, but extends throughout the court process. In order to conserve resources and make it easier for self-represented litigants to find assistance, existing self-help resources should be coordinated to incorporate programs such as the family law facilitator, small claims advisor, court-based legal services, and other programs into centers where both family and civil law information is provided.

Self-help centers should be encouraged to include an array of tasks designed to assist the public and the court in the processing of cases involving self-represented litigants. Examples of such tasks include (1) positioning staff in the courtrooms to prepare orders, assist in reaching agreements, or answer questions; (2) conducting mediation and other settlement processes; (3) conducting status conferences and providing assistance with preparation of judgments; (4) assisting in coordination of related cases and in development of optimal court operations to expedite cases involving self-represented litigants; (5) serving as a resource for judicial officers and court staff on legal and procedural issues affecting self-represented litigants; (6) offering

litigants procedural information about enforcement of orders and judgments; (7) providing information to assist litigants with complying with court orders; (8) serving as a single point of contact for community-based organizations and volunteers at the court; and (9) making information available to litigants about the appellate process.

RECOMMENDATION II: SUPPORT FOR SELF-HELP SERVICES

A SYSTEM OF SUPPORT SHOULD BE DEVELOPED AT THE STATE LEVEL TO PROMOTE AND ASSIST IN THE CREATION, IMPLEMENTATION, AND OPERATION OF THE SELF-HELP CENTERS AND TO INCREASE THE EFFICIENT PROCESSING OF CASES INVOLVING SELF-REPRESENTED LITIGANTS.

THE TASK FORCE RECOMMENDS THAT:

A. The Administrative Office of the Courts (AOC) maintain a resource library with materials for use by self-help centers in the local courts.

Critical work has already been done throughout the state to develop self-help materials for self-represented litigants designed to assist them with obtaining and enforcing court orders. Materials should be collected and expanded, and made available to local courts through resource libraries at the AOC and its regional offices. Web site designs, videos, brochures, translations, information packets, sample grant applications and partnership agreements, MOUs, volunteer training guides, and other materials frequently can be easily replicated or modified for use in other parts of the state. Detailed information on self-represented litigant efforts that have been recognized with California court or bar awards should be showcased.

B. The AOC provide technical assistance to courts on implementation strategies.

The AOC should continue to provide funding to courts for the development, updating and implementation of community focused action plans for serving self-represented litigants. These planning efforts have been helpful to the courts in coordinating existing services as well as creating new services. The materials as a result of these planning efforts should be distributed statewide. Technical assistance should be provided to local courts in their efforts to serve self-represented litigants including distributing information about promising and effective practices.

C. The AOC gather and evaluate information about the feasibility of implementing a telephone help-line service to support local self-help centers with access to AOC attorneys.

The AOC should seek funding to provide assistance to the local courts by having staff available to assist with both legal subject matter expertise and knowledge about daily court operations. In this way the AOC attorneys can serve as a resource for local self-help center and other court staff on legal and procedural matters involving self-represented litigants. Bilingual staff should be available to provide some telephone assistance for customers of court-based self-help centers that do not have bilingual staff available answer questions.

D. The AOC serve as a central clearinghouse for translations and other materials in a variety of languages.

Self-represented litigants who face language and cultural barriers comprise a significant segment of the Californians seeking access to justice without benefit of counsel. Several existing self-help programs have provided extensive services to non-English-speaking immigrants. Creation of model protocols based on these achievements and the lessons learned, as well as a central clearinghouse and retention center for translations would be invaluable for courts throughout the state with diverse populations.

E. The AOC expand the California Courts Online Self-Help Center.

The California Courts Online Self-Help Center has provided assistance to an enormous number of Californians since its launch. In calendar year 2002, there were over one million users of the Website. Many Judicial Council forms can now be filled out online on this Web site. The AOC has now translated this site into Spanish and should create additional materials in different languages.

The self-help Web site should be expanded to include short videos in English and Spanish explaining various legal concepts critical to self-represented litigants, such as service of process and courtroom presentation, and definitions of the roles of judges and clerks. The Web site should be expanded to include additional step-by-step guides and interactive features such as programs to help users decide where to file their cases, prepare agreements and other documents. Further development of Web site tools to assist the public in accessing legal information, and to assist the court in serving the self-represented population of litigants, should be supported and encouraged.

F. The Judicial Council continue to simplify its forms and instructions.

Recently, the AOC has redrafted its domestic violence restraining order and adoption forms and instructions in a plain-English format. The response from the public has been very positive. Continued work to simplify forms and procedures, as well as to redesign forms in a plain-English format, should be supported and encouraged. Special attention should be given to fee waiver forms and standardized procedures for issuing fee waivers.

The AOC should also continue its efforts to translate forms and instructions into more languages and to develop new forms that can facilitate efficient case processing. The use of computer technology should be explored with respect to creating of computerized documents that can impart content created in different counties and that allow pages to be tailored to meet the needs of users (including accommodations for different disabilities).

As subject matter advisory committees to the Judicial Council follow the Access Policy for Low- and Moderate-Income Persons adopted by the Judicial Council on December 18, 2001 and consider the impact of any proposed rules, forms or procedures on low-income litigants, they should be especially mindful of the impact on self-represented litigants.

G. The AOC continue to provide technical training and assist local courts in the development and implementation of self-help technology on countywide or regional bases.

Work has already been done on the development of technology designed to support self-help centers and provide distance-learning tools for the public. Examples are interactive forms programs; local Web site construction; videoconferencing for workshops, meetings, and court appearances; programs that allow clerks to create orders after hearing in the courtroom; expanded telephone systems for direct telephone assistance and direct-dial connections to legal and other community services and language interpretation. The AOC should continue to assist local courts in developing these and other technologies to assist self-represented litigants, and to provide training on how to incorporate technology into the self-help centers.

H. The Judicial Council continue to support increased availability of representation for low- and moderate-income individuals.

A key to partial representation is the provision of limited scope (unbundled) services. Limited scope representation allows a litigant to retain legal representation on a limited number of issues or tasks within a case, or for a single or limited number of court appearances. Many times it is only the discovery process or judgment drafting that challenges the self-represented litigant. Other times, the presence of an attorney at one hearing can help resolve a case. The opportunity to retain counsel for a discrete portion of a case would be of enormous help to many. The concept of limited scope representation should continue to be pursued and supported. The AOC should provide training to judges and court staff and collaborate with the State Bar for training of attorneys on limited scope representation.

To meet special needs and to increase the availability of full representation for low- and moderate-income litigants, partnerships between the judicial branch and nonprofit legal services organizations, the State Bar of California and local bar associations, the California Commission on Access to Justice, and the Legal Services Trust Fund Commission should be continued to increase funding for legal services in California.

The Judicial Council has adopted a resolution encouraging pro bono legal assistance, and the Chief Justice has demonstrated his personal commitment to this effort in many ways, including appearing at the State Bar's Annual Meeting to personally present the State Bar President's Pro Bono Service Awards each year. Judicial officers should be advised of the many ways in which they can join the Chief Justice in supporting pro bono work and other legal service efforts consistent with the California Code of Judicial Ethics provisions on impartiality. Local courts

should consider promoting pro bono work through the recognition of programs or other procedures that make pro bono commitment less onerous for a lawyer.

I. The Judicial Council continue to work with the State Bar in promoting access for self-represented litigants.

Much can be accomplished by entities working together to promote access for self-represented litigants. These entities could help ensure coordination in developing resources and encourage efforts in this area. This could include recognizing and honoring, with awards and otherwise, individuals and organizations leading the way in providing access to self-represented litigants.

J. The AOC provide technical assistance related to self-represented litigants to courts that are developing collaborative justice strategies.

Many courts are now implementing collaborative justice strategies. Examples are criminal, family and juvenile dependency drug courts as well as homeless and community courts. Domestic violence courts have also been implemented that collaborate with an array of service providers for families. Six mentor courts are in the process of developing a unified court for families model, and others have previously adopted this strategy. A number of the collaborative justice courts deal with high percentages of self-represented litigants. The AOC should provide technical assistance to these collaborative justice programs with issues relating to self-represented litigants. These courts seem to be provide holistic and helpful services for many self-represented litigants and should be encouraged.

RECOMMENDATION III: ALLOCATION OF EXISTING RESOURCES

PRESIDING JUDGES AND COURT EXECUTIVES SHOULD CONSIDER THE NEEDS OF SELF-REPRESENTED LITIGANTS IN ALLOCATING EXISTING JUDICIAL AND STAFF RESOURCES.

THE TASK FORCE RECOMMENDS THAT:

A. Judicial officers handling large numbers of cases involving self-represented litigants be given high priority for allocation of support services such as research attorneys.

In reviewing the practices of courts throughout the state, it became apparent to the task force that frequently the least experienced and sometimes the least knowledgeable judicial officers were given an assignment with a high population of self-represented litigants. Because self-represented litigants many times lack a sophisticated understanding of the law, basic fairness dictates that the judicial officer hearing a matter without attorneys should possess a comprehensive knowledge of the law. The importance of assigning suitable and talented judicial officers and staff who possess the requisite energy and enthusiasm to deal with calendars with a high volume of self-represented litigants cannot be overstated. Presiding judges must provide sufficient resources to allow judicial officers and staff to provide quality service to self-

represented litigants. Such resources may be the access to research attorneys to provide the court with research that the court would ordinarily order the lawyers to prepare if the parties were represented. It may also include availability of self-help center attorneys in the courtrooms to assist with cases involving self-represented litigants. All too often calendars with the greatest frequency of self-represented litigants receive the smallest proportion of court resources.

Many times a person's only experience with the court system is as a self-represented litigant in a family, small claims, traffic, or unlawful detainer case. This single experience can determine an individual's trust and confidence in the courts. The individual's perception is often shared with family, friends and co-workers, so one experience can have a ripple effect, influencing levels of trust for judicial institutions among the general public, far beyond those with first-hand negative court experience.

B. Courts continue, or implement, a self-represented litigant planning process that includes both court and community stakeholders, and works toward ongoing coordination of efforts.

Many courts have developed enormously effective self-represented litigant planning groups locally that include participants from other governmental agencies, local bars and legal services and numerous community participants. Courts should be encouraged to continue these court and community collaborative groups and include regular meetings of stakeholders to discuss ways to coordinate and enhance resources for self-represented litigants.

RECOMMENDATION IV: JUDICIAL BRANCH EDUCATION

IN ORDER TO INCREASE THE EFFICIENCY OF THE COURT AND TO MINIMIZE UNWARRANTED OBSTACLES ENCOUNTERED BY SELF-REPRESENTED LITIGANTS, A JUDICIAL BRANCH EDUCATION PROGRAM SPECIFICALLY DESIGNED TO ADDRESS ISSUES INVOLVING SELF-REPRESENTED LITIGANTS SHOULD BE IMPLEMENTED.

THE TASK FORCE RECOMMENDS THAT:

A. A formal curriculum and education program be developed to assist judicial officers and other court staff in dealing with the population of litigants who navigate the court without the benefit of counsel.

The surveys conducted by local courts in developing action plans to serve self-represented litigants indicate that these litigants rate the availability of staff to answer questions as the most valuable service the court can provide. In contrast, a similar inquiry of court personnel suggested that self-represented litigants could best be served not through direct staff service, but through written materials and other self-help support. (See Appendix 3) Such a dichotomy is also evident in survey and anecdotal information gathered by this task force. This gap must be bridged, and it is hoped that education will assist in doing just that.

Judicial officers and court staff receive nominal, if any, education to prepare them to address the unique issues presented by self-represented litigants. The traditional litigant is represented by a lawyer who is well acquainted with court rules and procedures and accustomed to courtroom and courthouse practices. Most self-represented litigants do not routinely use the court and consequently they face and present particular challenges when they attempt to effectively access the justice system. Indicators from courts that provide assistance to self-represented litigants point to the fact that better informed litigants help the courts run smoothly. It is hoped that by providing staff with better skills to address these challenges direct service efforts will be viewed as more feasible and productive.

Conventional judicial branch education has been premised on the assumption that the typical person interacting with the courts is an attorney or other person with at least minimal training in the law (i.e., attorney services, paralegals, legal secretaries, etc.). Based on a variety of factors previously discussed, the California courts are now serving an increasing number of self-represented litigants who have not had formal legal training or education, many of whom also have very limited English proficiency. Those charged with the responsibility of providing court services to this expanding group of litigants need special education and training to ensure fair and efficient delivery of services. Research should be conducted with judicial officers and litigants to determine effective strategies for communicating with self-represented litigants and to manage courtrooms in an efficient manner that allows litigants to have trust and confidence in the court.

In recent years education was offered to prepare judicial officers and court staff to work more effectively in the court system with distinct needs such as persons living with disabilities or children. Much thought was given to how the courts could accommodate unique requirements and still maintain the neutrality crucial to every fair adversarial proceeding. A model and delivery methods should be developed to provide judicial officers and court staff with the skills necessary to ensure that the needs of self-represented litigants are accommodated effectively within the bounds of impartiality. Subject matter areas should include:

- Ethical constraints when dealing with self-represented litigants
- Working with self-help center staff to promote courtroom efficiency
- Simple and ordinary English language skill

- Effective interaction techniques when one or both parties is self-represented
- Cultural competency
- Creation of a fair process that promotes the perception of fairness
- Community outreach and education

Education for temporary judges, security staff, bailiffs, and others who often have significant interaction with self-represented litigants, but who often don't receive training in how to work effectively with them, should be developed and made mandatory whenever possible.

B. The AOC provide specialized education to court clerks to promote their ability to provide the public with high-quality information and appropriate referrals, as well as to serve as support staff to the self-help centers.

Particular attention should be given to continuing and expanding the training and education of court clerks. The expectation that clerks should answer questions for the public as long as no legal advice is given makes the need for increased training and education critical. The information provided to the public should be reliable and of high quality. Further, if clerks are assigned to support self-help center attorneys, additional education is required to ensure the competence of the services provided. Subject matter areas should include the following:

- The difference between legal advice and legal information
- Working with self-help center staff to provide effective service to the public
- Training on community services available to self-represented litigants
- Uniform procedures for handling fee waiver requests
- A basic overview of substantive and procedural issues relevant to self-represented litigants
- Self-help Web site information available to court staff
- Creation of perception of fairness and equal treatment of all court users
- Effective skills in dealing with people in crisis
- Cultural competency
- Use of simple and ordinary English language skills when explaining legal procedures

RECOMMENDATION V: PUBLIC AND INTERGOVERNMENTAL EDUCATION AND OUTREACH
JUDICIAL OFFICERS AND OTHER APPROPRIATE COURT STAFF SHOULD ENGAGE IN COMMUNITY OUTREACH AND EDUCATION PROGRAMS DESIGNED TO FOSTER REALISTIC EXPECTATIONS ABOUT HOW THE COURTS WORK.

THE TASK FORCE RECOMMENDS THAT:

A. The AOC continue to develop informational material and explore models to explain the judicial system to the public.

Judicial officers should be encouraged to engage in community outreach and education programs. All too often the public forms its impressions and acquires its knowledge of the legal system based solely on the images of the legal system portrayed in the popular media. These depictions are often unrealistic and misleading and make it difficult for self-represented litigants to accurately anticipate and appropriately prepare for their day in court. To counter these distortions, judicial officers should be encouraged to engage in community outreach and education. Existing communication modes should be employed to better inform Californians about their courts. Videotapes, speaker materials and talking points on a variety of legal issues could be prepared for use by public-access television, self-help centers, law libraries, and other information outlets. A law-related educational Web site should be developed for grade school, middle school, and high school students. Programs such as Spanish language radio programs should be encouraged to expand outreach to traditionally underserved populations. For example, information could be provided to alert immigrant populations in their native languages to the most commonly encountered differences between California's laws and those in their countries of origin.

B. Efforts to disseminate information to legislators about services available to, and issues raised by, self-represented litigants be increased.

Materials should be developed to more fully inform local and state legislators of the issues raised by self-represented litigants and to advise district and local staff as to how they might best direct constituents to services that are available to self-represented litigants. "Day on the Bench" activities that courts conduct should include a visit to the self-help center. Collaborative intergovernmental endeavors to address the needs of self-represented litigants would be extremely productive.

C. Local courts provide law enforcement, local bar associations, law libraries, local domestic violence councils, and other appropriate community groups with information on issues and services related to self-represented litigants.

Local courts should make training available to law enforcement agencies who must enforce the domestic violence, custody/visitation, eviction and other orders made by the court. Law enforcement can be asked to enforce orders for which the individual seeking assistance has no written document, or arguing parties may present an officer with orders that appear to conflict. Information should be made available about enforcement of orders for self-represented litigants and the ways in which these orders can be modified through the court process. Courts should be encouraged to solicit ongoing input from law enforcement about problems they are experiencing in the field enforcing court orders.

The California justice structure represents a continuum of effort beginning many times with an officer on street and ending at some point in the court system. The need for cooperative and collaborative efforts to ensure efficient and consistent administration of justice both in practice and in perception must be instilled. Additionally local bar associations, law libraries and other

appropriate community services should be kept informed about services available and issues of concern to self-represented litigants, and included in collaborations for trainings among agencies.

D. The Judicial Council continue to coordinate with the State Bar of California, the Legal Aid Association of California, the California Commission on Access to Justice, and other statewide entities on public outreach efforts.

Under the direction of the Judicial Council, coordination efforts between the AOC, the State Bar of California, the Legal Aid Association of California, the California Commission on Access to Justice and other organizations including those representing law librarians, public libraries and diverse community groups are critical to distributing information about statewide efforts and to supporting the work of local courts. Efforts to encourage community groups to assist litigants utilize self-help websites and other technological resources are one example of outreach activities as are co-sponsored conferences and workshops.

RECOMMENDATION VI: FACILITIES

SPACE IN COURT FACILITIES SHOULD BE MADE AVAILABLE TO PROMOTE OPTIMAL MANAGEMENT OF CASES INVOLVING SELF-REPRESENTED LITIGANTS AND TO ALLOW FOR EFFECTIVE PROVISION OF SELF-HELP SERVICES TO THE PUBLIC.

THE TASK FORCE RECOMMENDS THAT:

A. Court facilities plans developed by the AOC include space for self-help centers in designs for future courthouse facilities, or remodeling of existing facilities.

Self-help services should be as close to the counter clerk's office as possible. Adequate space should be provided for self-help center staff to provide services to the public. Self-represented litigants also need space to sit and work on their paperwork at the court. Space should be available to conduct mediations with self-represented litigants. To maximize staff resources, space to conduct workshops should be provided. Copiers, computers, and other technological resources in the self-help centers should be available for self-represented litigants' use.

Courts should develop an access checklist for court personnel to use that enables them to see the courthouse through the eyes of a first-time user. The tool should consider signage, how easy it is to find the self-help center, and other issues self-represented litigants face in navigating the court. An example is the method of identifying courtrooms. Identification of courtrooms, including numbering, should be focused on helping the public easily find the correct location.

B. Facilities include sufficient space for litigants to wait while conducting business at the court.

Court facilities should provide for sufficient space for litigants to wait while conducting business. Waiting areas can contain written information, posters, flowcharts and types of

information that might help the litigant be better informed by the time they reach the clerk's window.

C. There be sufficient space at or around courtrooms to wait for cases to be called, to meet with volunteer attorneys, to conduct settlement talks, and to meet with mediators and social services providers.

Frequently calendars with a high percentage of self-represented litigants are fairly large. This can be particularly true in family law. It is important for the safety of all concerned that a safe and sufficient space is provided for litigants to wait for their cases to be called. Problems arise if there is not enough space to sit in the courtrooms, or if the space is overcrowded, and the litigants are forced to wait in hallways without the support of courtroom staff. Space should also be made available at or near courtrooms for litigants to meet with service providers such as mediators, volunteer attorneys or social service providers.

D. Facilities include children's waiting areas for litigants who are at the court for hearings or to prepare and file paperwork.

Litigants are often forced to bring children with them. Lack of funds or available child care is a common problem. Litigants are not able to supervise young children and pay attention to instructions given to them by court staff. Without appropriate accommodations, unattended children run unsupervised in the halls of the courthouse while the litigant is filling out forms. This creates frustration for other court users, court staff, and the parents. Also, valuable time is wasted and safety is compromised.

Further, litigants often cannot find child care on the day of their hearings. Children are not allowed in the courtrooms in many family law departments. There is no way the parent can effectively participate in a hearing and handle the child at the same time. Again, this creates frustration for litigants and increased burden on court staff. Properly staffed children's waiting areas should be incorporated into all facilities to ease these burdens. Courts should be encouraged to use the provisions of Government Code §26826.3 to provide funding to staff these waiting rooms.

E. Information stations that can provide general information about court facilities and services be placed near court entrances.

Information stations situated near entrances have proved to be very helpful to litigants in navigating their way around the court. This can be to be an ideal use of volunteers from the community who have no legal training. Litigants can be directed to their desired location and to self-help centers and other resources. General questions about how to use the facility and the location of services can be addressed, and information about assistance for litigants with special physical and language needs can be available.

F. Courts provide maps and signage in several languages to assist self-represented litigants in navigating the court.

Signs, maps, and floor-plan charts have all proved useful to the public for providing information about how to use the court. These should be translated in to several languages and can provide much-needed assistance. Universal signage should be developed to help litigants find common services such as an information station.

RECOMMENDATION VII: FISCAL IMPACT

IN ADDRESSING THE CRITICAL NEED OF COURTS TO EFFECTIVELY MANAGE CASES INVOLVING SELF-REPRESENTED LITIGANTS AND TO PROVIDE MAXIMUM ACCESS TO JUSTICE FOR THE PUBLIC, CONTINUED EXPLORATION AND PURSUIT OF STABLE FUNDING STRATEGIES IS REQUIRED.

THE TASK FORCE RECOMMENDS THAT:

A. Continued stable funding be sought to expand successful pilot programs statewide.

The Judicial Council should seek stable funding to support and expand valuable existing programs such as the family law information centers, family law facilitators, self-help pilot projects, planning grants for self-represented litigants projects, the Unified Courts for Families project, and the Equal Access Partnership Grant projects. Funding should be sought to expand successful pilot programs throughout the state.

Current programs operating to meet the needs of self-represented litigants rely on a variety of funding sources. Until adequate and stable funding is included within the judicial branch's appropriation, there can be no assurance self-represented litigants throughout the state will have equal access to justice. Regrettably, access to justice presently is often dependent on the resourceful and vigilant efforts of local courts and communities to secure funding to support services for these litigants. It is imperative that the Judicial Council continue to explore and pursue funding strategies for self-represented litigant services.

B. The AOC identify, collect, and report on data that support development of continued and future funding for programs for self-represented litigants.

The task force is very mindful of the current fiscal circumstances in California and recognizes the need for a thoughtful and cost-effective plan. A number of the suggested initiatives require ongoing funding and dovetail with ongoing work of the Judicial Council and the trial courts. Other proposals require new funding. Work needs to begin to develop a basis for continued and future funding. An attempt has been made to put forward measures that will save money as a result of consolidation, standardization, and other efficiencies.

Understanding that demonstrated need is a basic component of any successful funding request, the task force has tried to identify sources from which compelling data might be collected. The Judicial Branch Statistical Information System (JBSIS) should include information on whether or not one or both litigants are represented by counsel in all categories of cases. The information should be collected and reported by the AOC.

In addition to collecting uniform statistics from courts, a survey of local and state legislators should be considered to determine the number of constituent contacts they receive from self-represented litigants requesting legal assistance. Current information on state and local poverty demographics should be compiled and synthesized. Organizations serving the homeless and other disadvantaged segments of our population may also be able to contribute specific instances of demonstrated need for legal services. Needs assessments conducted by legal service providers and by other organizations such as the United Way are other sources of information.

C. Standardized methodologies to measure and report the impact of self-help efforts continue to be developed.

In addition to needs for service, the impact of programs for self-represented litigants must be documented and reported on. The AOC is currently conducting two major evaluations of self-help programs and the results of those evaluations should be disseminated when completed in March, 2005. The evaluation tools developed by these projects should be distributed to the courts to assist them in evaluating their local self-help centers. Strategies for determining and documenting cost-savings would be of particular value.

Quality, not just quantity, of service must be calculated in evaluation of these programs. The impact of these services must also be measured. Uniform definitions of terms must be established to allow for valid comparisons. New tools must be designed and implemented to capture efficacy data. Standard and periodic exit surveys or customer satisfaction inquiries should be considered throughout the state. These results will not only gauge success of a program, they will be useful in determining the relative effectiveness of individual parts of a program as compared with other services. Additionally, a method should be crafted by which the impact of the self-help centers in expediting cases may be assessed. Examples of possible tools include review of court operations data, judicial surveys, and surveys of court staff. The effectiveness of computer and web-based self-help programs should also be studied.

D. Uniform standards for self-help centers be established.

Basic minimum standards should be established. Criteria should include minimum staffing levels, experience, facilities requirements, and hours of operation. These standards should be incorporated into the development of uniform definitions of terms for the purpose of gathering meaningful data.

E. The feasibility of additional revenue generating techniques, such as fees for selected services by self-help centers, be explored if appropriate.

Given the dire fiscal circumstances facing the state of California, and the judicial branch in particular, the task force felt it would be remiss if it did not consider policies and practices that may have potential for revenue generation. In that vein the task force considered the concept of user fees. The task force acknowledges that any fee arrangement would need to be designed in such a way that it does not restrict access to the court or create any misunderstanding as to the creation of an attorney client relationship. A fee schedule based on ability to pay and procedures for fee waivers would need to be devised. A cost effective means of collection would also need to be designed. Within the parameters of these significant challenges, the task force cautiously suggests that the feasibility of fees for service as a potential revenue source to support services to self represented litigants be explored.

F. Efforts of the courts to seek supplemental public funding from local boards of supervisors and other such sources to support local self-help centers be supported and encouraged.

Although we now have state court funding, many counties have made the decision to support local self-help projects, and have worked out partnerships with their local courts and legal services programs to enhance their budgets for assistance to self-represented litigants. This represents an understanding by county government of the constituent need for such services. It is hoped these endeavors will serve as an example for other countries of a sensible expenditure of public funding for meaningful constituent services.

G. Court-based fees be used for court-based self-help services.

Despite the shift of financial responsibilities for the courts from the counties to the state, certain justice system revenues have yet to be shifted to the judicial branch. A realignment of revenue should be sought to direct justice-system-related revenue within the judicial branch. The small claims advisor fees and funds from the Dispute Resolution Program Act are two examples of revenue sources that could be utilized to meet the needs of self-represented litigants. Increases in filing fees to subsidize self-help centers were not considered appropriate at this time in light of competing critical needs such as court facilities, and the fact that court fees are already heavily laden with a variety of special assessments. Should a realistic opportunity for the institution of such fees arise, it should be pursued.

H. AOC assistance with grant applications and other resource enhancing mechanisms continue to be offered to local courts.

The Judicial Council, through the AOC, should continue to provide assistance to local courts on how to obtain grant funding, offer centralized purchasing options to enhance buying power, and

otherwise support local courts in obtaining resources for self-help. Generic materials should be developed for the courts to use in seeking grants from appropriate outside sources.

RECOMMENDATION VIII: IMPLEMENTATION OF STATEWIDE ACTION PLAN

TO PROVIDE FOR SUCCESSFUL IMPLEMENTATION OF THIS STATEWIDE ACTION PLAN, A SMALLER TASK FORCE CHARGED WITH THE RESPONSIBILITY OF OVERSEEING IMPLEMENTATION SHOULD BE ESTABLISHED.

THE TASK FORCE RECOMMENDS THAT:

- A. The implementation task force be composed of experts in the areas of judicial education, court facilities, legislation, judicial finance and budgeting, court administration and operations, and court-operated self-help services.**

The implementation of well-designed programs for self-represented litigants that effectively facilitate the expeditious management of their cases in court requires knowledgeable input from all levels of court operations. Participation of judicial officers and self-help attorneys is imperative. Expertise in court management, operations, facilities, and budgeting will also be required. Additional expertise is needed in the areas of legislation and education for judicial officers and other court staff.

- B. The implementation task force have representation from existing Judicial Council advisory committees.**

The task force recognizes that many of the strategies recommended in this plan will require action by a variety of Judicial Council Advisory committees such as the Presiding Judges and Court Executives, Appellate, Family and Juvenile, Civil and Small Claims, Court Interpreters, Traffic, Probate, Technology, and Facilities Committees. The implementation task force should have representatives from those committees to ensure effective coordination and appropriate subject matter expertise.

Conclusion

This task force has attempted to fulfill its mission by presenting a comprehensive statewide plan that addresses the critical need of courts to effectively manage cases involving self-represented litigants while providing assistance to the public. The handling of self-represented litigants is a daily business event at every level of the court operations - from filing through calendaring, records management, and courtroom hearings. As courts plan during this period of fiscal austerity, attention to the reality of these cases will be imperative to any realization of net savings. Providing assistance to self-represented litigants clearly addresses the need of the self-represented public for information, but it is a matter of administrative efficiency for courts. The task force believes that by directly confronting the enormity of pro per litigation, courts can

improve the quality of their service to the public, and reduce the time and cost of service delivery.

While many litigants will need full or partial representation, the self-represented litigant population continues to grow and is well documented nationally, and even internationally. California, in recognizing that the courts have a duty to provide all Californians with a fair and efficient process by which to resolve their disputes, has been in the forefront of the effort to provide services to self-represented litigants and thereby increase access to justice. In so doing, the critical need for courts to include planning for the effective management of cases involving self represented litigants has become clear.

Courts are recognizing the cost benefits of the self-help centers and their attorneys in cases involving self-represented litigants. Cost savings have been found in reduction of time for judges and other court staff; inaccurate paperwork and unnecessary continuances; and in expeditious case management and settlement services. These are but a few of the self-help techniques that work to maximize scarce resources for the courts.

As Chief Justice Ronald M. George has noted, the population appearing in today's courts has changed in every capacity, and as a result, so have society's expectations. California can and should continue its leadership role in this regard.